

DECRIMINALIZING DRUNK DRIVING: A MEANS TO EFFECTIVE PUNISHMENT

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Drunk driving should not be a crime. This is not to say that it should be approved of or viewed with indifference; rather, the routine case should not be handled by the criminal justice system. That system, employing arrest based on probable cause, prosecution, conviction, and corrections, has proved to be generally ineffective in dealing with drunk drivers. It should be replaced with punishment based on administrative procedures.

A major problem with the criminal justice system is that it fails to deliver punishment to drunk drivers with sufficient certainty and swiftness to support the credibility of the deterrent threat. Indeed, the system often fails to punish them at all. The source of difficulty lies in the enormous number of drunk-driving law violators compared with the resources of the criminal justice system. Punishment of even a small proportion of these violators overwhelms a system based on the principles of formal, individualized justice. The attempt burdens and distorts that system, transforming it into a bureaucracy; however, it yields very little in the way of reforming criminals or deterring the public.

In contrast, recently developed administrative systems appear to be far more successful in dealing with drunk drivers. These systems lead not to fines and jail terms but to license suspension and revocation. Typically, licenses may be taken for 90 days, not for the crime of drunk driving but for the administrative offense of having been in charge of a motor vehicle with a blood alcohol concentration (BAC) exceeding a tolerated limit (generally 0.10%). The license is often taken for a longer period (such as a year) if a person suspected of drunk driving refuses to cooperate in a chemical test (most often a breath test) for alcohol.

The driver's license is usually taken on the spot by the police, and all driving privileges are formally withdrawn after a short period in which the police action can be appealed to an administrative hearing. At the hearing, the issues are few—often only whether the person was properly stopped and requested to provide the test, and whether the test was failed or refused. The decision follows the preponderance of evidence, a standard more likely to result in a decision against the driver than the criminal standard of proof beyond a reasonable doubt.

From the viewpoint of certain and swift punishment, the administrative process is clearly preferable to the criminal one. Moreover, the driving public has been shown to view license revocation as a serious punishment, at least as severe as the typical fine of a few hundred dollars or a day or two in custody. Most important, there is empirical evidence that license actions reduce subsequent traffic misbehavior, both by the drivers to whom they are applied and by the general population. Compared with those who keep their licenses but undergo typical education and therapy programs, drivers losing their licenses have fewer subsequent crashes and violations. Moreover, rates of total alcohol-involved crashes and other indexes of drunk driving have frequently been shown to diminish following passage of administrative license revocation statutes. (The relevant literature is summarized in Nichols & Ross, 1989.)

However, administrative license revocation laws have at times proved cumbersome for the police and confusing to the public, because they are introduced into a situation in which the criminal process prevails and is not removed. Thus, there are two independent procedures to follow after a drunk-driving arrest: a criminal one that can lead to conviction and often (generally ineffective) ed-

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ucation and therapy along with fines and perhaps token jail stays, and an administrative one that can lead to license revocation. There are two possible hearings: a criminal trial and an administrative review of the police action in taking the license. This duplication has undermined some of the advantages of the administrative process. Because there may be two hearings (the court procedures being mandatory), overburdened police are tempted to avoid the administrative one, where their appearance may not be mandatory. In many jurisdictions, failure of this crucial witness to appear at the administrative hearing results in automatic rescission of the action and return of the license. The duplicate procedures also lead to resentment and confusion among drivers, who cannot understand, for instance, why their licenses, taken administratively, should not be returned after a court has found them not guilty of drunk driving. Such people are more likely to drive without licenses than those who understand the process whereby their licenses were revoked (Ross & Gonzales, 1988).

Inasmuch as license revocation is an effective drunk-driver sanction and typical criminal punishments appear not to be, it seems reasonable to abandon the criminal process in routine cases. Routine cases might be defined as those in which test results suggest that impairment occurred, but not endangerment in the sense of dangerous, reckless behavior, or any realized harm, such as injury or property damage. When BACs are unusually high (e.g., over 0.20%), the cases might also be excluded from the "routine" category. Removal of routine cases from the caseload of courts and corrections institutions would presumably allow these institutions more time and resources for determining and executing the appropriate programs for individuals most in need of treatment and for dealing with the cases most urgently demanding symbolic punishment.

If license action is to become the legal mainstay for social protection against drunk driving, it should be bolstered to deter the violation of restrictions.

For example, it should be required that the vehicle in which the driver was apprehended, and any others owned by the driver or members of the immediate household, display plates indicating a possible revoked status for the driver. The plates should in themselves serve to warrant stopping and investigative questioning by police. Criminal penalties for driving in defiance of a revocation order based on a drunk-driving incident should be severe and should include incarceration, lengthened license revocation, and impoundment of the vehicle used in violation of license revocation orders. Prolonged revocation should also be the standard penalty for repeat offenses, provided always that the offenses in question are routine ones.

The proposed decriminalization of routine drunk-driving cases, leaving their handling to administrative action alone, restricts a system that has been found to be generally ineffective in hopes of supporting one that promises effectiveness, both with the punished offender and the driving public at large. The suggested system provides an uncomplicated procedure with which to process routine offenders and unburdens the criminal justice system to devote more time and resources to those cases requiring individual and moral attention. It thus preserves and enhances the role of criminal justice in announcing and enforcing standards for behavior, a task fundamentally beyond the ability of administrative agencies.

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